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SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

STATE OF WASHINGTON,
Plaintiff,
v.
TVI, INC., d/b/a Value Village,
Defendant.

No. 17-2-32886-3 SEA

ORDER ON
STATE'S MOTION FOR
RECONSIDERATION
(GRANTED IN PART)

This matter came before the Court on the State of Washington's ("State" or "AGO") Motion for Reconsideration of the Court's July 23, 2018, order granting in part TVI, Inc.'s ("TVI") Motion for Partial Summary Judgment. Dkt. 46 ("Order").

Having considered the State's reconsideration motion, TVI's opposition, and reply thereto, as well as accompanying declarations and exhibits, the previous filings in this matter, including the parties' summary judgment briefing, and oral arguments heard on Tuesday, September 18, 2018, the Court grants State's Motion in part and reverses its earlier ruling granting Partial Summary Judgment in favor of TVI. The Court finds that there are material issues of fact and denies Summary Judgment to both the State and TVI.

1 A. Denial of State's Motion for Summary Judgment.

2 1. In bringing a CPA claim, the State must prove, at a minimum, (1) an unfair or
3 deceptive act or practice; (2) occurring in trade or commerce; (3) that affects the public
4 interest. *See State v. Mandatory Poster Agency, Inc.*, 199 Wn. App. 506, 518 (2017) (citing
5 *State v. Kaiser*, 161 Wn. App. 705, 719 (2011)). The Court further cited in its Order the
6 applicable legal standard that “[t]o establish a CPA violation, ‘[a] plaintiff need not show the
7 act in question was intended to deceive, only that it had the capacity to deceive a substantial
8 portion of the public.’” Order ¶ 2 (quoting *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d
9 27, 47 (2009)). Unlike in a private cause of action under the CPA, the State is not required
10 to prove causation or injury, nor must it prove intent to deceive or actual deception. *Kaiser*,
11 at 719.

12 2. The State alleges that Value Village created a deceptive net impression
13 because Value Village represented to the public that it “pays local nonprofits every time you
14 donate,” when in fact it does not pay for the hard goods, like furniture and other
15 miscellaneous household items. The State argues that TVI’s “blended” rate of pay constitutes
16 a deceptive practice under the CPA because, contrary to its representations to the public, TVI
17 actually only paid for clothing items and not hard goods. The State asserts that this Court
18 should have granted summary judgment in favor of the State, or at the minimum, it has
19 presented dispute over material fact on the key issue of whether TVI paid for all the donations
20 it received from its charities.

21 3. The contracts submitted in connection with the summary judgment motions
22 showed that TVI paid its charity partners for used goods based on a per-pound cloth goods
23 rate that “incorporated” payment for hard goods. In some cases, the cloth rates varied

1 depending on the quantities of hard goods each charity partner provided such that a charity
2 partner that provided larger quantities of hard goods were paid higher rates.¹ Although the
3 charity contracts differed, all the contracts provided that the “hard goods” were not separately
4 paid for and that they were instead included in the pricing for the clothing items.

5 4. Furthermore, TVI also has asserted that this “blended” payment is an industry
6 wide practice in order to account for “difficulty of identifying a per-pound rate for hard goods
7 that would provide compensation for vastly different types of goods.” According to TVI,
8 75% of the donated goods are not useful for sale.

9 5. Under the applicable standards for summary judgment in favor of the non-
10 moving party, the Court finds and concludes that there exists a dispute over material fact that
11 TVI did not pay its charities for every item of donation as the State argues.

12 14 B. Order Granting TVI’s Motion for Partial Summary Judgment.

15 6. Similarly, the State has provided evidence that TVI was not paying its charities
16 for all the hard good it received. TVI’s internal billing ledgers state that TVI was paying
17 \$0.00 Dollars to its charities for hard goods. Secondly, the State has submitted evidence from

19 19 1 For example, Schedule A to TVI’s contract with Arc of Clark County (TVI000001-TVI000009,
20 attached to John A. Nelson Declaration in support of State’s Motion for Summary Judgment) provided:

21 21 3. Miscel, Books, Furniture and OLI are included in Cloth
22 pricing.

23 23 4. Miscel product delivered will be a minimum of 30% of Cloth
24 delivered by weight as measured each period.

25 25 5. Seller will deliver a minimum of 30 furniture pieces per week.
26 Delivered Product Price;

27 27 • Of the weekly Miscel weight delivered for the period average
is greater than or equal to 25.0% the price will be: \$0.423 per Cloth pound
delivered.

• If the weekly Miscel weight delivered for the period average
is between 20.0 and 24.9% the price will be: \$0.418 per Cloth pound delivered.

• If the weekly Miscel weight delivered for the period average
is less than 20.0% the price will be: \$0.413 Cloth pound delivered.

1 charities that they should be paid for hard goods separately instead of the combined blended
2 rate of pay with the clothing donations.

3 7. Whether a particular statute applies to a factual situation is a conclusion of law;
4 whether a party in fact committed a particular act is reviewable under the substantial evidence
5 test. *Leingang v. Pierce County Med.*, 131 Wn. 2d., 150, 930 P.2d 288 (1997). In order to
6 preclude summary judgment, the nonmoving party must present sufficient *prima facie*
7 evidence to support a verdict in its favor. See, Tegland and Ende, *Wash. Handbook on Civil*
8 *Procedure* §69.15

9 8. Based on the current evidence, this Court finds and concludes that a dispute
10 over material fact exists. Although TVI has submitted declarations from charities that they
11 were fully compensated and that they value their relationship with TVI, the State's evidence
12 contradicts them.

13 9. Accordingly, the Court GRANTS the State's motion for reconsideration in
14 part, and this Court's earlier oral ruling and written order granting partial summary judgment
15 in favor of TVI is vacated.

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20 ENTERED this 20th day of September, 2018.

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27 The Honorable Samuel Chung